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The principle upon which these cases rest is that, when one contracts with a railroad company with reference to matters wherein the general public is interested, the contract is made subject to the superior rights of the general public; and when the exigencies of the business of the company are such that the rights of the public conflict with those of the contracting party, it is presumed that it was the intention of the parties that the private rights should yield to the superior rights of the public. It is only where the railroad company can show that superior rights of the public have intervened that it may escape performance, when the contract is otherwise capable of being specifically enforced. See *Taylor* v. *Florida East Coast R. R. Co., supra; Texas & Pacific R. R. Co.* v. *Marshall, supra; Conger* v. *New York, W. S. & B. Ry. Co., supra.*

TAXATION—ILLEGAL APPROPRIATION—TAXPAYERS' RIGHT TO INJUNCTION.—A state legislature passed an act making appropriations for the salaries of various state officers. The plaintiff, as a private citizen and taxpayer, filed a bill to enjoin the state treasurer from paying out any of the state funds in pursuance of the act, alleging the act to be unconstitutional. *Held,* the injunction is granted. *Fergus* v. *Russel* (Ill.), 110 N. E. 130. See NOTES, p. 382.

TORTS—INTERFERENCE WITH BUSINESS OR OCCUPATION—JUSTIFICATION.—The defendant, by threats and other means not unlawful in themselves, prevented the plaintiff from obtaining boarders and caused others to cease dealing with her. The defendant's acts were prompted by spite and ill-will toward plaintiff and without any reasonable expectation of benefit to himself. As a result of these acts the plaintiff's business was ruined. *Held,* such intentional interference with the plaintiff's business without justifiable cause is an actionable wrong. *Hutton* v. *Watters* (Tenn.), 179 S. W. 134. See NOTES, p. 385.

WILLS—WITNESSING IN TESTATOR'S PRESENCE—BLIND TESTATOR.—The testator, who was blind, duly executed a will. After he had signed the will, the witnesses attested it by subscribing their names thereto, on a table about four feet from the bed where the testator lay. *Held,* the attestation was in the presence of the testator. *In re Allred's Will* (N. C.), 86 S. E. 1047.

Practically all of the state statutes require that a will, to be valid, must be attested by witnesses in the presence of the testator. Here, the word presence involves two ideas: mental cognition of the act of attestation and physical proximity to its accomplishment. See PAGE, WILLS, 229.

Primarily, the testator must be mentally cognizant of what is being done. *Heatherington* v. *Pipes,* 32 Miss. 451; *Orndorf* v. *Hummer,* 12 B. Mon. (Ky.) 619; *Healey* v. *Bartlett,* 73 N. H. 110, 59 Atl. 617, 6 Ann. Cas. 413. When the testator is mentally cognizant of the act, however, but does not take notice of it, and he is not prevented from taking notice by physical infirmities, the attestation is in his presence.

Aiken v. *Weckerly,* 19 Mich. 481; *Bradford* v. *Vinton,* 59 Mich. 139, 26 N. W. 401; *Heatherington* v. *Pipes, supra.* On the other hand, even though he be corporeally present, if he is not mentally cognizant of what is being done, the attestation is not in his presence. *Orndorf* v. *Hummer, supra.*

Further, the word presence implies that the act of attestation take place in physical promixity to the testator. See PAGE, WILLS, 230. Just what degree of physical proximity is required has been variously decided. Still, it is well settled that, where the attestation takes place in the same room with the testator there is a *prima facie* presumption that the act was done in his presence. *Ayers* v. *Ayres,* 43 N. J. Eq. 565, 12 Atl. 621; *Stewart* v. *Stewart,* 56 N. J. Eq. 761, 40 Atl. 438. And when the attestation takes place in some other room there is a *prima facie* presumption that the act was not done in his presence. *Mandeville* v. *Parker,* 31 N. J. Eq. 242; *Mendell* v. *Dunbar,* 169 Mass. 74, 47 N. E. 402.

The early test of physical proximity was that of sight. The courts construed the words, in the presence of, to mean in the sight of. See 2 VA. L. REV. 407. But in modern times the courts have adopted a broader view; and have so applied the test of mental cognition and physical proximity, that the rule now seems to be, that the act need not necessarily be within his sight, but only within the range of the testator's other senses. *Cook* v. *Winchester,* 81 Mich. 581, 46 N. W. 106, 8 L. R. A. 822; *Cunningham* v. *Cunningham,* 80 Minn. 180, 83 N. W. 58, 81 Am. St. Rep. 256, 51 L. R. A. 642; *Riggs* v. *Riggs,* 135 Mass. 238, 46 Am. Rep. 464; *Healey* v. *Bartlett, supra.* The modern view has been applied in cases of attestation in the presence of a blind testator; especially, since the testator can only comprehend the act through his remaining senses, the sense of sight having been lost. *Ray* v. *Hill,* 3 Strob. (S. C.) 297, 49 Am. Dec. 647. See also, *Reynolds* v. *Reynolds,* 1 Spears (S. C.) 253, 40 Am. Dec. 599; *Riggs* v. *Riggs, supra.*